

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 09, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NICHOLAS A. FUENTES, III,

Petitioner,

v.

JAMES KEY,

Respondent.

NO: 2:19-CV-410-RMP

ORDER GRANTING MOTION TO
SUBSTITUTE RESPONDENT AND
DISMISSING ACTION WITH
PREJUDICE

By Order filed January 28, 2020, the Court directed Petitioner Nicholas A. Fuentes, III, a prisoner currently housed at the Airway Heights Corrections Center, to show cause why this action should not be dismissed as time barred under 28 U.S.C. § 2244(d). ECF No. 7. Petitioner had presented his *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 on November 27, 2019, and is proceeding *pro se* and *in forma pauperis*; Respondent has not been served.

The Court granted Plaintiff an extension of time to comply with the Order to Show Cause, and Plaintiff filed his Response, titled, “Motion to: Show Cause” on

ORDER GRANTING MOTION TO SUBSTITUTE RESPONDENT AND
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1 May 18, 2020. ECF No. 13. He subsequently filed a document identifying James
2 Key as his current custodian which the Court liberally construes as a Motion to
3 Substitute the Proper Respondent. ECF No. 14. That Motion, **ECF No. 14**, is
4 **GRANTED**. The District Court Clerk shall **TERMINATE** Respondent Donald
5 Holbrook and **ADD** James Key.

6 The Court has reviewed the file, including Petitioner's "Statement of the
7 Case," ECF No. 14 at 2–11, and is fully informed. Although granted the
8 opportunity to do so, Petitioner has failed to demonstrate a statutory basis to delay
9 the commencement of the federal limitations period regarding his May 5, 2015
10 Spokane County conviction for possession of heroin. *See* 28 U.S.C. § 2244(d). He
11 has also failed to demonstrate a statutory or equitable basis to toll the federal
12 limitations period which expired on June 6, 2016. *See id.*; *see also Holland v.*
13 *Florida*, 560 U.S. 631, 649 (2010); *Waldron–Ramsey v. Pacholke*, 556 F.3d 1008,
14 1011 (9th Cir. 2009); *Harris v. Carter*, 515 F.3d 1051, 1055 (9th Cir. 2008).
15 Petitioner's efforts to challenge his 2015 conviction in 2018, 2019 and 2020,
16 including his most recent effort documented in his Motion to Allow Additional
17 Documents to Show Cause, ECF No. 11, were made after the federal limitations
18 period had already expired and, therefore, will not toll it.

19 Consequently, **IT IS ORDERED** that this action is **DISMISSED with**
20 **prejudice** as time barred under 28 U.S.C. § 2244(d).

